



Office of The Mayor and City Council

December 15, 2011

James B. Martin, Regional Administrator
US EPA, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

Re: Richardson Flat Multi-Party Agreement Negotiations

Dear Administrator Martin:

The shuttle negotiations regarding the proposed Multi-Party Agreement between Park City Municipal Corporation (PCMC or the City) and United Park City Mines Company (UPCM or the mine company), have reached a critical juncture. The City has serious concerns about terms proposed by UPCM at this eleventh hour. These proposals are potential "game changers," described below, *to which PCMC intends to respond*—PCMC is not walking away. However, the City understands that UPCM currently takes the unilateral position that a counterproposal from the City on any term will cause UPCM to end negotiation of the Multi-Party Agreement. Before Park City presents its response to UPCM's recent demands, PCMC requests the opportunity to meet with you to discuss EPA's role in the current negotiation posture of the parties.

EPA's role in the Multi-Party Agreement negotiations is critical to the City's ability to achieve an equitable settlement agreement with the mine company. EPA's enforcement authority under CERCLA has been, and continues to be, a principal motivator for the parties to enter into the Multi-Party Agreement. The Multi-Party Agreement would accomplish two removal actions, settle cost contribution claims and other disputes between UPCM and the City, and is likely to result in a new repository with capacity for large volumes of CERCLA waste as well as mine waste generated by municipal and private development projects in Park City. Despite the difficult negotiations, these potential benefits to the parties and the public are well worth pursuing.

It is the City's perception that EPA has provided few incentives for UPCM to enter into the Multi-Party Agreement. Recent statements and waste volume estimates shared by EPA staff indicate that, whether UPCM enters into the Multi-Party Agreement or not, EPA would allow UPCM to perform a relatively limited removal action in the new OU3 near the Richardson Flat Site. A more limited removal action would not require the construction and operation of a new

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repository. Therefore, the envisioned Multi-Party Agreement has little benefit to UPCM and gives it virtually no incentive to negotiate a fair deal.

The mine company's intransigence in the negotiation of the Multi-Party Agreement reinforces the City's view that UPCM has little incentive to move forward. UPCM has declined to participate in face-to-face negotiations, consistently missed deadlines, generally failed to respond in writing, and recently demanded more and greater concessions from the City. There are four principal and critical aspects of these new demands. First, UPCM proposes to shift the long term ownership and liability of the new repository to PCMC. Since the February 2011 EPA draft of the agreement, Park City was obliged to "convey," and UPCM was assumed to take long term ownership and operation of the City's Pace property for a repository.

Second, UPCM has declined to participate to any extent in EPA's request that PCMC donate any interest in land it owns for a repository. The City long has agreed to donate its solely-held Pace property for a repository, as was reflected in prior agreements. Other than small parcels in the Middle Reach likely unsuitable for a large repository, the City does not solely control other land in the proposed operable units; Summit County co-owns the Triangle parcel and UPCM owns the Park & Ride area of Richardson Flat (Park City holds a lease for recreation and the parking facility). Any discussion of the Park & Ride specifically would require UPCM involvement, which we understand is not forthcoming.

Third, UPCM proposes to reduce its financial contribution to OU4 (the Prospector Drain) by as much as \$3 million. The City has budgeted for the work at OU4 on the full value of Trust Fund containing the \$10 tipping fee for development waste, up to an estimated \$3.6 million, to help fund the OU4 removal, with any remainder reverting to the mine company. This was the Legal Enforcement Program's understanding of the agreement and accordingly the way the current version of the AOC is drafted. The Remedial Project Manager, however, agrees with the mine company's position that the agreement was that the City has access to only 20% of the Trust Fund.

Finally, UPCM also insists that the City pay a CERCLA waste tipping fee of \$10 per cubic yard, totaling an estimated nearly \$4 million, which no other landowner is required to pay. Moreover, UPCM would require the City to pay this fee in addition to the agreed-upon 10% City share of the OU3 removal action. The 10% allocation already covers the City's landowner liability at OU3, so this additional tipping fee appears to be a windfall for UPCM.

UPCM's position is possible because whether UPCM participates in this Multi-Party Agreement negotiation or not, the consequences to it are minimal. While the City acknowledges that EPA cannot "force" UPCM to enter into the Multi-Party Agreement, a shift in EPA's enforcement posture to place more OU3 and OU4 cleanup responsibility on the mining company could present a meaningful incentive for UPCM to take greater interest in the success of a Multi-Party Agreement that fairly allocates responsibility between the mine company and the City.

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The City sincerely appreciates the effort EPA has made in these protracted, difficult negotiations to achieve a final Multi-Party Agreement. However, we have serious concerns about the ability to succeed without a shift in EPA's enforcement posture toward the mining company and some clarification that EPA will not, whether overtly or informally, offer assurances that EPA does not require a second repository to accomplish its goals.

Yours truly,

A handwritten signature in cursive script, appearing to read "Dana Williams".

Dana Williams
Mayor

cc Park City Council Members
 Tom Bakaly, City Manager
 Andrea Madigan, EPA Region 8 Legal Enforcement Program
 Kathryn Hernandez, EPA Region 8 Superfund
 Lori Potter, Kaplan, Kirsch & Rockwell